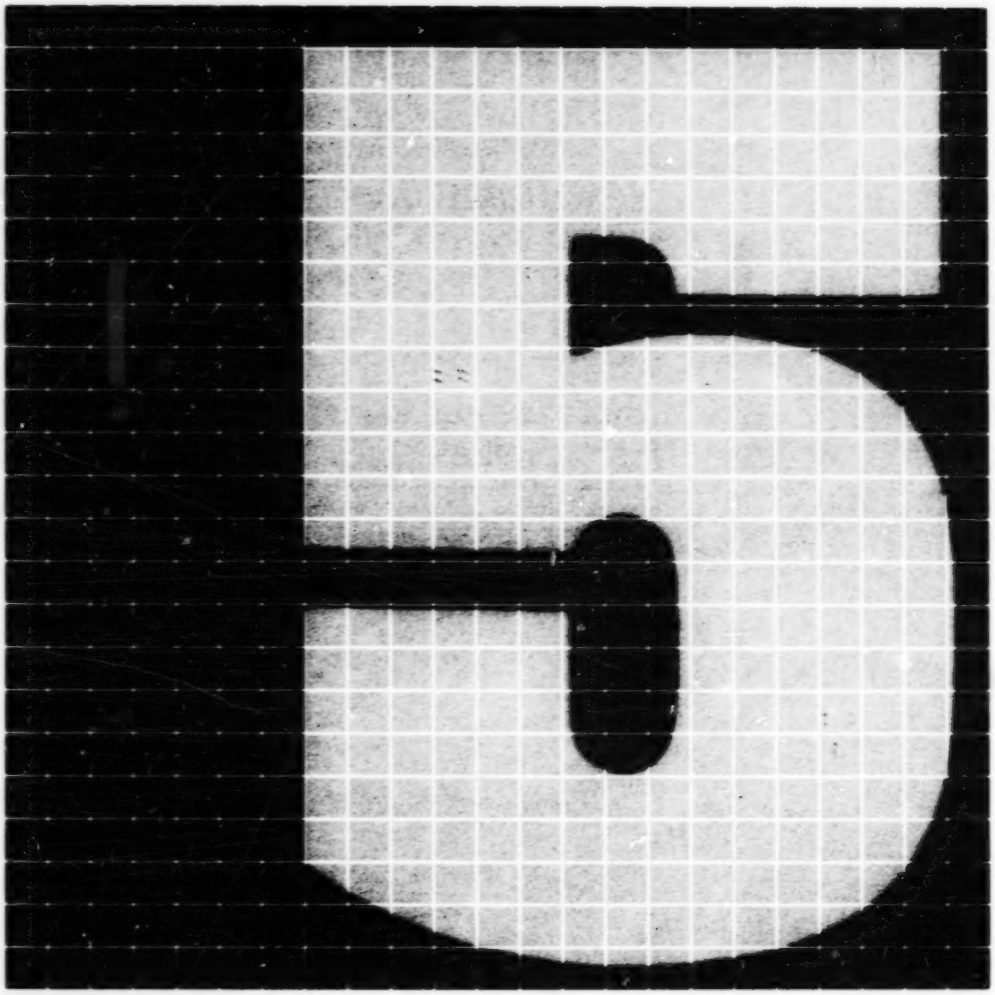
Blueprint for Waste Management in Ontario

Appendix 5

Legislative Implications of the Blueprint for Waste Management



Ontario

Ministry of the Environment

Hon. Keith C. Norton, Q.C., Minister

Gérard J. M. Raymond, Deputy Minister

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This is one of 11 appendices to the Blueprint for Waste Management. A complete list is presented on the inside of the back cover.

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APPENDIX 5
LEGISLATIVE IMPLICATIONS OF THE BLUEPRINT FOR WASTE MANAGEMENT

The Blueprint for Waste Management contains proposals for updating present waste management practices, policies and controls. Enabling legislation is an integral part of the process.

This Appendix discusses a number of the more significant areas where legislative change is likely to take place, depending on the response to proposals in the Blueprint and the options chosen.

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APPENDIX 5

LEGISLATIVE IMPLICATIONS OF THE BLUEPRINT FOR WASTE MANAGEMENT

Many areas considered in the Blueprint, if adopted, will require implementation by legislative change or imply the need for more detailed analysis, which will lead to legislative change. This Appendix discusses some of these areas.

INTERPRETATION

A number of definitions relevant to waste management now appear in the Environmental Protection Act or the regulations made under the Act. The proposals in the Blueprint would lead to more and clearer definitions, both in the Act and the regulations, not so much to expand regulated areas, but to more clearly distinguish categories of regulated materials, activities or persons and thereby facilitate regulations and regulatory activities which deal more particularly and more appropriately with various aspects of waste management.

WASTE

Part V of the Environmental Protection Act deals with "waste" and the word has its commonly understood meaning. The "definition" of waste in Part V is less a definition, than a few examples from the range of materials one recognizes as waste. Power is granted to designate "other wastes" in the regulations, but this power might be interpreted narrowly by a court and be limited to designating various categories of material which are demonstrably of no value to anyone. It is proposed to permit the designation of any material as a "waste" in order to provide a secure foundation for appropriate regulation of recycling activities, which depend on the fact that what is waste to one person can be a valuable resource to another.

HEARINGS

If adopted, the suggestions in the Blueprint as to the fixing of a site capacity limit as the dividing line between a discretionary E.P.A. hearing

and the application of the Environmental Assessment Act will require legislative change in Part V and also changes to the general regulation under the Environmental Assessment Act.

APPROVALS/APPEALS

The application of the Consolidated Hearings Act or the Environmental Assessment Act or both to undertakings otherwise subject to Part V of the Environmental Protection Act creates a complicated and confusing variety of administrative procedures for issuance of formal certificates of approval and for the appeal of terms and conditions imposed on certificates of approval. Clarification in these areas can provide simplification consistent with the intent and procedures of the Consolidated Hearings Act.

MUNICIPALITIES

The Blueprint suggests a major re-examination of the role of the municipality in the management of waste. Depending upon the outcome of such reconsideration, various aspects of the desired municipal involvement will require implementation by legislative amendment. Among these aspects are: municipal planning and the role of the Waste Management Master Plan; the extent of municipal responsibility for waste; the extent of municipal authority to regulate waste management activities; the role of the provincial government in encouraging, funding or requiring municipal action; cooperation among municipalities; and, the provision to the appropriate level of municipal government of the powers appropriate to the tasks assigned.

PERPETUAL CARE

Implementation of a perpetual care or any post-closure program for waste disposal sites will require the most carefully considered legislative changes, not only for matters of funding and disbursement, but also for establishment of site administration procedures for cessation of waste acceptance, site rehabilitation and decommissioning, post-closure monitoring and, finally, perpetual care of the site. Additional considerations include possible amalgamation of this program's funds with existing funds in the Waste Well Disposal Security Fund and possible adjustments to harmonize this proposal with the current requirement that no use be made of a closed

waste disposal site for twenty-five years without the approval of the Minister.

PENALTIES

None of the fines provided under the Environmental Protection Act has changed since the Act was passed in 1971, although a new penalty was added in 1981 specifically for offences involving hauled liquid industrial waste or hazardous waste. Reconsideration of the magnitude of fines, if only from the standpoint of inflation, is needed. Also, further thought should be given to different fines applicable to different portions of the Act.

REFINEMENT OF REGULATORY CONTROLS

Experience gained over the years with the various provisions of the Environmental Protection Act and with Part V in particular has identified a number of areas where improvements could be made to enhance appropriate control over regulated activities. These areas, which require further thought, include:

a) power to refuse grossly inadequate applications for which a hearing would otherwise be mandatory;

b) power to require studies and tests to bolster applications;

c) broader power to impose conditions on approvals to,
   i) further the public interest,
   ii) require registration on title,
   iii) require monitoring and reporting,
   iv) require site operational and closure plans;

d) broader power to deal with illegally deposited waste in situations where removal is not warranted;

e) improved power to make orders to site operators to,
   i) require information, testing and reports,
   ii) require preparation and implementation of operational and closure plans,
   iii) require replacement of contaminated water supplies,
   iv) require submission of a new application for approval where current operations are at variance with current approval;

f) power to require registration on title of notice of existence of a

former waste disposal site;

g) additional powers for provincial officers to seize or detain evidence, documents or harmful material;

h) revocation of provisions dealing with abandoned motor vehicles as not constituting an environmental problem, but a problem better addressed by municipal or police activities; and

i) power to take action to remove and dispose of waste materials not located at a certified disposal site in the absence of accountable owners of the waste.

TRANSITIONAL

It is necessary to consider carefully the appropriate legislation required to provide a transition from the existing system to the new approach which will result from the Blueprint process. As well as provisions for gradually phasing in any new financial requirements, it will be necessary to evaluate currently operating waste management facilities, establish precisely the extent of any new or continuing approvals and formulate new conditions (possibly including closure) to deal with any environmental problems identified in the evaluation process.

Schedule of Appendices

1. Waste Management Consultation Session Report
2. Waste Reduction, Reuse, Recycling and Recovery Report
3. Perpetual Care Program Report
4. Interim Guideline for the Interpretation of the Hazardous Waste Definition (Regulation 309)
5. Legislative Implications of the Blueprint for Waste Management
6. Proposed Revisions to Regulation 309
7. Proposed Revisions to Regulation 313
8. Proposed Generator Regulation
9. Terms of Reference for a Waste Management Master Plan
10. Solid Waste Management Cost Accounting Summary Report
11. Proposed Regulation Under the Environmental Assessment Act Regarding Private Waste Disposal Sites